



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 30, 1989

Mr. James M. Kuboviak
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LO-89-70

Dear Mr. Kuboviak:

Thank you for your letter of July 31, asking whether Attorney General Opinion JM-1060 (1989) is altered by the 71st Legislature's addition of section 6.036 to the Tax Code. See H.B. 432, Acts 1989, 71st Leg., ch. 796, § 5, at 3592. After reviewing the newly adopted legislation, we conclude that it modifies Attorney General Opinion JM-1060.

Attorney General Opinion JM-1060 considered "whether a private attorney who is a director of an appraisal district may contract to collect delinquent taxes for a taxing unit that participates in the appraisal district." That opinion concluded: (1) section 6.03(a) of the Tax Code does not prohibit an attorney from becoming director of the appraisal district which includes that taxing unit; (2) chapter 171 of the Local Government Code does not require a director who has a contract to collect delinquent taxes for a local taxing unit to recuse himself from participating in board decisions on appraisal policy; and (3) the common law doctrine of incompatibility does not prohibit a director from contracting under section 6.30 of the Tax Code with a local political subdivision to collect its delinquent taxes. We noted, however, that there might be other circumstances where an "attorney's interest in a contract for delinquent tax collections might require him to recuse himself." Attorney General Opinion JM-1060 at 5. We also listed disciplinary rules and Penal Code provisions directed at curtailing abuses in such a situation. *Id.* at 6.

Section 6.036 of the Tax Code, which places certain limitations on contracts entered into between individuals, appraisal districts, and the appraisal review board, provides:

(a) An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:

(1) the appraisal district; or

(2) a taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by this title.

(b) An appraisal district may not enter into a contract with a member of the board of directors of the appraisal district or with a business entity in which a member of the board has a substantial interest.

(c) A taxing unit may not enter into a contract relating to the performance of an activity governed by this title with a member of the board of directors of an appraisal district in which the taxing unit participates or with a business entity in which a member of the board has a substantial interest.

(d) For purposes of this section, an individual has a substantial interest in a business entity if:

(1) the combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business entity; or

(2) the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

(e) In this section, 'business entity' means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

(f) This section does not limit the application of any other law, including

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the common law relating to conflicts of
interest, to an appraisal district
director.

Tax Code § 6.036. (Emphasis added.)

Section 6.036 prohibits contracts of the type discussed in Attorney General Opinion JM-1060 if the director has a substantial interest in a business entity that contracts with a taxing unit or appraisal district. Both substantial interest and business entity are defined. Tax Code § 6.036(d), (e). Subsection (f) states that this section should be construed along with any other laws applicable to an appraisal district director, including those discussed in Attorney General Opinion JM-1060. Therefore, Attorney General Opinion JM-1060 still remains in effect, but it is modified to include the additional limitations imposed by section 6.036 of the Tax Code.

Very truly yours,

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